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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

THE PEOPLE,
Plaintiff and Respondent,
v.
FRANCISCO MOLINA,
Defendant and Appellant.

A130210

(Solano County
Super. Ct. No. VCR201780)

Defendant Francisco Molina appeals his conviction after a jury found him guilty of possession of a firearm by a felon. He contends the evidence is insufficient to sustain the conviction. We affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On July 2, 2009, an information was filed charging defendant with one count of being a felon in possession of a firearm (Pen. Code, former § 12021, subd. (a)(1)). The information also alleged he had a prior strike conviction for voluntary manslaughter (Pen. Code, §§ 1170.12, subds. (a) – (d); 192) and had served a prior prison term (Pen. Code, § 667.5, subd. (b)).

I. The Prosecution’s Case

On January 23, 2009, at about 10:30 a.m., officer Mark Simonson was on patrol in a marked police car when he approached a vehicle in the parking lot of a Safeway supermarket after receiving information that the driver had a suspended driver’s license. Defendant was the driver. Simonson asked defendant about his license, and he responded

that he thought the issues had been resolved and that his license was no longer suspended. Simonson decided to issue a citation for driving on a suspended license. He called for another officer and went back to his car to write the citation. Officer Craig Bloch arrived and they both walked back to the defendant's vehicle. Simonson intended to have the car towed.

Simonson asked defendant to exit the vehicle in order to search him as safety precaution. During the search, Simonson used his left hand to hold defendant's hands behind his back and began searching his waistband with his right hand.¹ As he moved his hand from defendant's right hip to the center mid-point of his torso, defendant leaned to the right. Simonson told him to stop leaning and stand up straight. Defendant straightened a bit but then he leaned again. Simonson continued the search and felt a hard object that appeared to be made of metal in the center of the waistband. Defendant's shirt was not tucked in, so Simonson touched the object through the shirt. He thought it could have been a gun, but it also could have been a large belt buckle. At that point, defendant quickly spun to his left out of Simonson's grasp. The two officers struggled with him for a short time before he ran away. They chased him, ordering him to stop.

The chase covered about 200 feet. As the officers chased defendant, Simonson watched to see if he dropped anything. He could not see defendant's hands because defendant was running away with his hands in front of his body. Eventually, defendant approached the north corner of the parking lot where a five-foot high retaining wall butts up against the west wall of the supermarket creating a 90-degree corner.² When he reached the corner, defendant appeared to be trying to scale the wall, as both his hands were over the top. Simonson did not see if there was anything in his hands when he put them over the wall.

Officer Bloch reached defendant first and pulled him off of the wall. Defendant continued to struggle and Simonson deployed his Taser. Eventually, defendant was subdued and placed in handcuffs. Simonson searched him again and did not find

¹ Defendant is six feet three inches tall and weighed about 330 pounds.

² There are houses located approximately 75 to 100 yards up the hill behind the wall.

anything similar to the object he had felt when he searched him before. Simonson searched the area where defendant had been running to see if he could find the object. Finally, he climbed over the retaining wall and found a gun in the exact spot where defendant's right hand had been. The surrounding grass and leaves were wet, but the gun had only a couple of droplets of water on it. On that side of the wall, there is only about a foot from the top of the wall to the ground. A hillside goes up away from the wall. It is not an area where people would normally walk.

The firearm recovered by Simonson was a .380-caliber gun made by Bryco Arms. The gun had a magazine containing six bullets. There were no bullets in the chamber. After the gun was logged into evidence, it was tested for fingerprints. No identifiable fingerprints were found. The parties stipulated that defendant had previously been convicted of a felony for purposes of the charged offense.

II. The Defendant's Case

Brandy Sharp works at the WestAmerica Bank located next to the Safeway in Benicia. She saw defendant in the bank before he was arrested. She did not see anything concealed in his waistband. During his arrest, she observed that his pants had slid down to his knees.

III. The Verdict and Sentencing

On March 23, 2010, the jury found defendant guilty.

On August 12, 2010, the trial court denied defendant's motion to strike the prior conviction. The court sentenced defendant to a term of five years in state prison calculated as follows: the two-year midterm for the underlying offense, doubled because of the strike, plus one year for the prior prison term enhancement. This appeal followed.

DISCUSSION

Defendant contends the jury's verdict is not supported by substantial evidence. He argues the record contains "no direct evidence indicating that [he] ever had the firearm in question in his possession." He claims the record equally supports the inference that the firearm was already present in the bushes before he attempted to climb the wall. Based

on his view that the circumstantial evidence gives equal support to two inconsistent inferences, he argues the inference supporting the verdict was not established.

“In reviewing a sufficiency of evidence claim, the reviewing court’s role is a limited one. ‘ “The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]” ’ [Citations.]” (*People v. Smith* (2005) 37 Cal.4th 733, 738–739.) It is incumbent upon the reviewing court to accept any logical inferences the jury might have drawn from the evidence. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

The lack of direct evidence that defendant possessed the gun is not a bar to a finding of guilt. “ ‘Circumstantial evidence may be sufficient to connect a defendant with the crime and to prove his guilt beyond a reasonable doubt.’ [Citation.]” (*People v. Bean* (1988) 46 Cal.3d 919, 933.) However, “By definition, ‘substantial evidence’ requires *evidence* and not mere speculation. In any given case, one ‘may *speculate* about any number of scenarios that may have occurred A reasonable inference, however, “may not be based on suspicion alone, or on imagination, speculation, supposition, surmise, conjecture, or guess work. [¶] . . . A finding of fact must be an inference drawn from evidence rather than . . . a mere speculation as to probabilities without evidence.” ’ [Citations.]” (*People v. Cluff* (2001) 87 Cal.App.4th 991, 1002.) “Evidence which merely raises a strong suspicion of the defendant’s guilt is not sufficient to support a conviction.” (*People v. Redmond* (1969) 71 Cal.2d 745, 755.)

In the present case, the jury was properly advised on the distinction between direct and circumstantial evidence, including the topic of reasonable inferences. The jury was also properly instructed on flight and consciousness of guilt. The evidence supporting the jury’s verdict is far from speculative. Immediately after Simonson felt a metallic-like object in defendant’s waistband, defendant spun around and ran away from the officers. As he was running, he held his arms in front of his body instead of swinging them at his

side. This suggests he was holding on to an object that he did not want the officers to see. The officers then saw him place both hands over the wall before they reached him. When the officers finally subdued him, he no longer had any hard object in his possession. Later, the gun was found exactly where his right hand had gone over the wall. There was no path or walkway behind the retaining wall and no nearby houses. Thus the area was not one where a randomly discarded firearm likely would be found. Further, although the ground and foliage were wet, the gun was primarily dry with only a few droplets on it, suggesting it had recently been placed there. In these circumstances, the jury could reasonably have inferred that defendant possessed the handgun and dropped it over the wall when the officers cornered him.

DISPOSITION

The judgment is affirmed.

Dondero, J.

We concur:

Marchiano, P. J.

Margulies, J.